Supreme Court, U.S.

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No. 98-

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1998

MUAZ B.A. FOFANA and ISLAMIC JAMAAT AND CULTURAL INSTITUTE,

Petitioners,

v.

LANDTECH ENGINEERING and ALI MIRTAGHAVI, P.E.,

Respondents.

Petition for a Writ of Certiorari to the Court of Appeals of Maryland

---

PETITION FOR WRIT OF CERTIORARI

DAVID CAREY WOLL, ESQUIRE
Counsel of Record
Woll & Woll, P.A.
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Montgomery Village, MD 20886
301-926-4811

QUESTION PRESENTED

WHETHER PETITIONER WAS DENIED DUE PROCESS OF LAW UNDER THE UNITED STATES CONSTITUTION BY THE RESPONDENTS' COUNSEL'S DECEIT IN ASSURING PETITIONER, WHO WAS WITHOUT LEGAL COUNSEL, THAT SETTLEMENT DISCUSSIONS WOULD TAKE PLACE BEFORE ANY HEARING ON THE MERITS OF RESPONDENT'S CLAIM.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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Postal telegraph-Cable Co. v Newport, 38 S.Ct. 566, 247 U.S. 464, 62 L.Ed. 1215 (1958).....5

STATUTES AND RULES

None

OTHER

None

IN THE

SUPREME COURT OF THE UNITED STATES

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PETITION FOR WRIT OF CERTIORARI

The Petitioners respectfully pray that a Writ of Certiorari issue to review the opinion and judgment below.

OPINIONS BELOW

The Order of the Court of Appeals of Maryland, dated March 12, 1999, appears at Appendix A.

JURISDICTION

The date on which the Court of Appeals of Maryland, the highest state court in Maryland, decided petitioners' case was March 12, 1999.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Amendment XIV

Section 1.

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Respondents brought suit against petitioners in the District Court of Maryland for Montgomery County for an alleged breach of contract. It was alleged that respondents completed preparations of preliminary site and architectural concept plans in connection with the proposed construction of a mosque and school in Hyattsville, Maryland. Respondents asserted that such services were provided to

petitioners and that they were owed the sum of $2500.00. Petitioners answered by filing with the District Court their Notice of Intention to Defend on the grounds that respondents had failed to complete all of the necessary work. The original trial date of July 9, 1997, was postponed at petitioners' request to August 27, 1997, because of petitioner Fofana's need to appear on July 9th in the Circuit Court for Baltimore City (Appendix B). Trial on August 27, 1997, was postponed by respondents pursuant to "agreement by counsel for all parties," for a trial date on November 26, 1997 (Appendix C). Although the respondents were represented by counsel, petitioners were not represented by counsel, but were proceeding pro se.

Respondents' counsel, Afshin Pishevar, Esquire, had advised petitioner Fofana, who was operating as the President and Chairman of Islamic Jamaat and Cultural Institute, that respondents were interested in engaging in settlement discussions with petitioner Fofana and that he would be contacting Mr. Fofana to arrange a meeting between the parties in an effort to settle the claim. He told Mr. Fofana that no trial would occur nor would any judgment be entered against petitioners until such a settlement meeting occurred. As a result, Mr. Fofana did not appear in court on November 26th to defend against the suit because he assumed in good faith that Attorney Pishevar would keep his word. Mr. Fofana's first knowledge that a judgment had been entered against petitioners was a notice he received from the District Court that an "Affidavit Judgment" had been entered on November 26, 1997, for $2500.00, plus costs of $30.00. The date of the notice was December 2, 1997. (Appendix D).

Petitioners filed a Motion to Vacate Judgment with the District Court and the motion was denied. (Appendices E and F). A de novo appeal hearing was conducted in Montgomery County, Maryland Circuit Court on December 17, 1998, at which hearing petitioner Fofana presented the facts surrounding attorney Pishevar's deception in causing Mr. Fofana not to appear in court on the trial

date. After the Circuit Court heard oral argument, it ruled that the denial by the District Court should stand. Petitioners then filed a Petitioner for Writ of Certiorari with the Court of Appeals of Maryland, which petition was denied on the basis that there was "no showing that review by certiorari is desirable and in the public interest."

REASONS FOR GRANTING THE PETITION

Petitioners contend that respondents' counsel's deceptive actions were such that petitioners were denied due process of law. Attorney Pishevar's representation to petitioner Fofana that a settlement conference would take place before any judgment would be entered against him was false and misleading. In fact, no settlement conference took place and respondents entered judgment against petitioners in their absence on the trial date. Mr. Fofana was not in court on that date because of Mr. Pishevar's assurances. Thus, Mr. Fofana was denied an opportunity to defend against the suit before any judgment was entered. This denial was clearly a violation of the due process clause of the United States Constitution.

Attorney Pishevar's deception is particularly egregious because Mr. Fofana is a lay person unfamiliar with the legal process. Mr. Pishevar took advantage of this situation

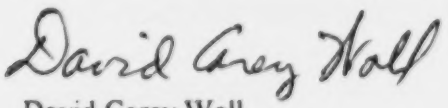
Every defendant in a civil case has a right to defend and to have a hearing on the merits of the claim. Lindsey v Normet, 92 S.Ct. 862, 405 U.S. 56, 31 L.Ed. 2d 36 (1972) (Due process requires that there be an opportunity to present every available defense.); Carey v Pyshus, 98 S.Ct. 1042, 435 U.S. 247, 55 L.Ed. 2d 252 (1978). (Procedural due process rules are meant to protect persons not from deprivation but from mistaken or unjustified deprivation of life, liberty or property); Postal Telegraph-Cable Co. v Newport, 38 S.Ct. 566, 247 U.S. 464, 62 L.Ed. 1215 (1918) (The opportunity to be heard is an essential requisite of due process of law in judicial proceedings, and

a state may not, consistently with the 14th Amendment, enforce a judgment against a party named in the proceedings without a hearing or an opportunity to be heard). If the actions of other party's counsel deceive a pro se defendant and deprive him of his day in court, this Court should intercede to direct that the judgment be vacated. The public interest in fairness in the court system demands it.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



David Carey Woll
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Montgomery Village, MD 20885
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MUAZ B.A. FOFANA et al	:	IN THE
	:	COURT OF APPEALS
v.	:	OF MARYLAND
	:	
	:	Petition Docket No. 642
LANDTECH ENGINEERING	:	September Term, 1998
et al	:	No. 4833, Circuit Court
	:	for Montgomery County)

ORDER

Upon consideration of the petition for a writ of certiorari to the Circuit Court for Montgomery County, and the answers filed thereto, in the above entitled case, it is

ORDERED, by the Court of Appeals of Maryland, that the petition be, and it is hereby, denied as there has been no showing that review by certiorari is desirable and in the public interest.

/s/ Robert M. Bell

Chief Judge

Date: March 12, 1999

Appendix A

DISTRICT COURT OF MARYLAND FOR Montgomery County
Located at 27 Courthouse Square Case No. 0601-001152-97

Landtech Engineering 10169 New Hampshire Ave. S. 187 Silver Spring, MD 20910	v.	Islamic Jamaat and Cultural Institute/ Muaz B.A. Fofana

REQUEST

It is requested that motion be granted to reschedule the above case due to the fact that defendant is to appear at the Circuit Court for Baltimore City on the same date and time of said trial, July 9, 1997.

Attached is a copy of the Circuit Court summons to appear.

Thanks

/s/

Certificate of Service

I certify that I served a copy of this Request upon the following party or parties by mailing first class mail, postage prepaid, on 06/23/97 to

Landtech Engineering Afshin Pishevar, Esquire	15 W. Montgomery Ave. Suite 300 Rockville, MD 20850

Law Office of Afshin Pishevar
Attorney and Counselor at Law
The Bell Building
Suite 300
15 West Montgomery Avenue
Rockville, Maryland 200850-4217
Telephone 301-279-8773 Facsimile 301-279-7347

August 25, 1997

VIA HAND
District Court of Maryland
For Montgomery County
27 Courthouse Square
Rockville, MD 20850

Attention: THE HONORABLE CLERK OF COURT
Re: Landtech Engineering, et al v. Fofana (Rockville case)
Case No.: 06-01-0011552-97
Joint request for Continuance

Dear Clerk:

Please be advised that the current trial date for the above-styled action is Wednesday, August 27, 1997, at 08:30 a.m. in the District Court of Maryland for Montgomery County, Rockville.

Pursuant to agreement by counsel for all parties, please postpone the trial date to Wednesday, November 26, 1997.

Thanking you for your time and attention, I am,

Very truly yours,

Afshin Pishevar

cc: Mr. Fofana (Via Facsimile)

Please initial and
Fax back.
Thank you.

Appendix C

District Court of Maryland for Montgomery County
27 Courthouse Square
Rockville, MD 200850-2325

Civil Case No. 0601-0011552-97
Complaint No.: 002

To: Islamic Jamaat and Cultural Insti
Serve: Muaz Fofana, "Chrmn. & CEO"
531 W. Diamond Avenue
Gaithersburg, MD 20877

Landtech Engineering
vs.
Islamic Jamaat and Cultural Institute

Date: 12-02-97

AFFIDAVIT JUDGMENT ENTERED

On November 26, 1997 this Court entered an Affidavit Judgment in favor of the Plaintiff in the above case in the amount of $2500.00 plus attorney's fees of $0.00, costs of $35.00, pre-judgment interest of $0.00 and other amount of $0.00 plus post judgment interest at legal rate.

This Defendant has until December 26, 1997 to file a motion to vacate this judgment, stating a factual and legal basis for a defense.

The Plaintiff to enforce this judgment may file for a lien on any real property owned by the defendant.

Appendix D

DISTRICT COURT OF MARYLAND FOR Montgomery County
Located at 27 Courthouse Square Case No. 0601-0011552-97

Landtech Engineering and Ali Mirtaghavi, P.E. 10169 New Hampshire Ave. S. 187 Silver Spring, MD 20903	v.	Islamic Jamaat and Cultural Institute/ 531 West Diamond Ave. Gaithersburg, MD 20877

MOTION

Pray, enter a motion to vacate an affidavit judgment against defendant entered by plaintiff on November 26, 1997. I still maintain and dispute that all work was done, honestly and sincerely. Proposal dates December 16, 1995, and authorized to proceed with the work on April 7, 1996, are still pending. Reference exhibit "A" attached.

Request Hearing on Motion

12/24/97

/s/
531 West Diamond Ave.
Gaithersburg MD 20877
301-670-9672

Certificate of Service

I certify that I served a copy of this Motion upon the following party or parties by mailing first class mail, postage prepaid, on Dec. 24, 1997 to:

Landtech Engineering
Afshin Pishevar, Esquire
15 W. Montgomery Ave.
Suite 300
Rockville, MD 20850

Appendix E

DISTRICT COURT OF MARYLAND FOR Montgomery County
27 Courthouse Square Case No. 0601-0011552-97
Complaint No.: 001

TO: FOFANA, MUAZ B.A.
531 W. Diamond Ave.
Gaithersburg, MD 20877

LANDTECH ENGINEERING
VS.
FOFANA, MUAZ B.A.

Date: 01/26/98

Motion filed: Notice of outcome

THE COURT, HAVING RECEIVED THE MOTION TO VACATE JUDGMENT
DENIED THE MOTION ON 01/26/98